(1) (3)

C.S. 1002

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P. NO. 1956 /2004

PETITIONER

M/s Shyamlal Agrawal
Through, Partner Shri Shyamlal
Agrawal S/O Shri S.K. Agrawal
Ameri Road, Nehru Nagar,
Bilaspur (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh
Through the Principal Secretary,
Department of Public Works
D.K.S. Bhawan, Mantralaya
Raipur (Chhattisgarh)

2. The Engineer in Chief
Public Works Department,
Raipur (Chhattisgarh)

3. Executive Engineer
Public Works Department
Pendra Division, Pendra Road
District Bilaspur (Chhattisgarh)

R. R. No. 19-39/04
Presented by Shri Aminal Dubey
dated 7-7-04

RECEIVED-COPY
7.7.04
Clerk to A. G. Bilaspur

PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRITS AND DIRECTIONS:-

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... WP No. 1956/ ..... **सन् 2004**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

10.11.2005

Shri Anand Kumar Tiwari, Advocate for the petitioner.

Shri Sandeep Dubey, Government Advocate for the respondents / State.

Heard.

The petitioner has preferred this writ petition under Article 226 of the Constitution of India questioning the legality, propriety and correctness of the order dated 6.3.2004 (Annexure P-14) passed by respondent No.2-Engineer-in-Chief, Public Works Department, Raipur whereby respondent No.2 has debarred the petitioner herein from participating in any tender process of any Public Works Department in Chhattisgarh for a period of two years from the date of the order.

Brief facts leading to filing of this petition are that the petitioner herein is a registered contractor. In response to the notice-inviting tender (for short 'NIT') issued by the respondents for construction of Achanakmar - Keochi - Kabir Chabutara road, the petitioner put in his tender papers and ultimately the tender of petitioner was accepted and the work to construct the said road was allotted to the petitioner. An agreement to that effect was executed on 5.6.2002 between the parties and work order was also issued on

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	the same day. The work was to be completed within the period of 8 months excluding the period of rainy season. However, the petitioner could not complete the work, therefore, a show cause notice dated 22.7.2003 (Annexure P-12) invoking sub-clauses (3) (a) (b) & (c) of the agreement was issued to the petitioner. The petitioner filed reply to the said show cause notice on 5.8.2003 (Annexure P-13) and it was mentioned in that reply that on account of unprecedented rain during the period and non-supply of hot mix plant by the manufacturer to him he could not complete the work and sought for extension of time. He also requested for enhancement of CSR rates, but the request of the petitioner was not accepted. The petitioner vide letter dated 6.2.2004 also requested for the payment of Rs.1,98,02,000/- for the work already executed by him. However, respondent No.2- Engineer-in-Chief by invoking the clause of special condition vide order dated 6.3.2004 (Annexure P-14) imposed a penalty debarring the petitioner from participating in any tender process of ~~the~~ Public Works Department in Chhattisgarh for a period of two years. This order has been challenged by the petitioner by way of this petition on the ground that the impugned order was passed without affording any opportunity to the petitioner to explain the circumstances under which the work could not be executed in time.	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

I have heard the learned counsel for the parties.

Learned counsel for the petitioner submitted that without giving any show cause notice to the petitioner straightway the petitioner was debarred by invoking the special condition, therefore, the impugned order is violative of principles of natural justice. In support of his contention, he placed reliance on the judgment of the Hon'ble Apex Court in the matter of **Raghunath Thakur V. State of Bihar and others** reported in **AIR 1989 SUPREME COURT 620** also on the judgment of Calcutta High Court in the matter of **Kalyan Banerjee Vs. Kamarhati Municipality and others** reported in **AIR 2001 Calcutta 21.**

On the other hand, learned Government Advocate for the State argued that inspite of the notice issued to the petitioner, he was not able to execute the work in time. On the contrary, the petitioner asked for the payment of amount before completion of work and even some portion of amount was already paid to him, therefore, the respondents-Department was entitled to invoke the provisions of special condition of the agreement and debar the petitioner as per Clause (4) of the special condition of the agreement and unless the said decision is taken on the ground of bias, same cannot be made subject matter of the judicial review by this Court. He placed reliance

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

on the judgment of the Hon'ble Apex Court in the matter of **Delhi Development Authority and another V M/s UEE Electricals Engg. (P) Ltd. and another** reported in **2004 AIR SCW 1853.**

It is an admitted position that the petitioner could not complete the work awarded to him, accordingly, a notice was issued to the petitioner of which he had filed the reply (Annexure P-13) narrating the grounds on account of which he was not able to complete the work. However, respondent No.2 herein by invoking the provisions of special condition of the agreement passed the impugned order dated 6.3.2004 debarring the petitioner from participating in any tender process of ~~any~~ Public Works Department in Chhattisgarh for a period of two years from the date of order. It is also admitted position that before invoking the powers under special condition of the agreement no show cause notice was issued to the petitioner regarding abandonment of work or failing to execute the work. Clause (4) of the special condition of the agreement envisages that "*if the contractor fails to execute the agreement within time prescribed in N.I.T. or abandon any work after executing the agreement. He shall be debarred from participating in any tender for any Public Works Department works in Chhattisgarh for a period of two years from*

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the date of forfeiture of the earnest money or from the date of termination of the contract." As debarring a contractor from participating in the tender process for a period of two years has civil consequence, therefore, the Engineer-in-Chief was required to atleast give a show cause notice to the petitioner calling upon him about his conduct and to debarring him from participating in the tender process for a period of two years. In the present case, the petitioner in response to the show cause notice issued under Clause (3) gave the reasons for non-completion of the work, therefore, respondent No.2 was required before passing the impugned order to consider the reply filed by the petitioner in response to the show cause notice and to arrive at a conclusion that the grounds raised by the petitioner are not bona fide and on account of that the department has not been able to get the work done in time. But, before passing the impugned order respondent No.2 has not recorded any finding nor given any opportunity to the petitioner to explain his conduct.

In the matter of Raghunath Thakur (*supra*) a contractor was blacklisted by the Collector. The Court in Para-4 of the judgment held that " *no notice had been given to the appellant of the proposal of*

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blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. In so far as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. It has to be realized that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order. In that view of the matter, the last portion of the order in so far as it directs blacklisting of the appellant in respect of future contracts, cannot be sustained in law...."

Similar view was taken by the Calcutta High Court in the matter of Kalyan Banerjee (supra). Therefore, any order having civil consequence passed without following the principles of natural justice, the Court has the power to have judicial review of the said order.

The judgment cited by learned counsel for the respondents is entirely on different grounds. In that case a contractor indulged in

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

assaulting employee of the authority and Para 7 of the said judgment shows that show cause notice was issued to respondent No.1 before blacklisting him. Therefore, the above judgment is of no avail in the present case.

In the result, for the foregoing reasons the petition of the petitioner deserves to be allowed and same is allowed. The order impugned dated 6.3.2004 (Annexure P-14) passed by respondent No.2-Engineer-in-Chief, Public Works Department, Raipur debarring the petitioner from participating in any tender process of ~~any~~ Public Works Department in Chattishgarh for a period of two years is hereby quashed.

Certified copy as per rules.

Sd/-
L.C. Bhadoo
Judge

Roshan/-

14/1/05 25/1/05 23.2.05